

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003
February 23, 2004

I am rising today, however, to speak about the bill which is hopefully going to come before the Senate and on which the majority leader has been so eloquent, as he often is. Especially when there are issues concerning the care for other people, the majority leader has truly established a record that is unique, certainly in the Senate, with the hands-on experience of physically saving lives as a result of his skills as a surgeon and a doctor. He has decided to bring to the Senate the issue of how we make sure women in this country have adequate access to doctors, especially during that period in their lives when they are delivering children.

I personally cannot think of anything more important to our culture than babies. If we were to pick one event in the life of a citizen of this country--or I suspect anywhere in the world--that really is an event of great wonder and alters a person's view of the world and how they work with the world, it is when one has a child. Certainly they want to make sure their children are delivered in a safe way and with the best medical help that can be obtained.

This is why this bill is so important, because trial lawyers do not deliver babies. Doctors deliver babies. If we do not have enough good doctors dealing with women who are about to deliver or who are becoming pregnant or who believe they wish to have a child, and to deal with them in a manner which allows women to have ready access so that they do not have to drive miles in order to see their doctor or they do not have to wait days in order to see a doctor because there are not any available, if we do not have that structure in our society then we put at risk our ability as a society to have healthy children and to have mothers who are comfortable and feel safe about the experience of childbirth. That is something that is serious.

Regrettably, that is where we have arrived as a society. Whether we like it or not, we have arrived at a time where women in this country are at significant risk of not being able to see a baby doctor because the baby doctors in this country are being driven out of the business by the cost of their errors and omissions insurance. That insurance has skyrocketed dramatically in the last few years as a result of lawsuits, and further in my statement I will get into some specific statistics that will show why these lawsuits are occurring and what their impact has been on the actual ability of doctors to practice, in a statistical term.

All of us who work in this area of trying to address the concerns of getting women decent access to doctors so they can have children safely have heard stories and anecdotes which are so regrettably consistent in the sadness of the tales that there has to be a great deal of truth to them. It is also supported by the numbers and statistics.

Last week I had the chance to meet with four obstetricians in New Hampshire. Two of them had to get out of the business of delivering babies. It was the favorite part of their practice. They were OB/GYNs. The cost of their insurance had increased so dramatically they could no longer afford to go into the operating room and deliver a child. Neither of those two doctors had ever had a claim against them relative to the children they had delivered before they gave up the practice, and they delivered quite a few.

Two of the other doctors were still delivering babies, but they had significantly curtailed their practice or their practice had been dramatically impacted by the cost of their insurance. One doctor told us everything he earned in the first 5 months of his practice every year went to pay his insurance premiums relative to a potential claim against him, and he never had a claim against him personally. There had never been a claim. Yet his premiums had jumped over 100 percent in the last 3 years. He was finding it very difficult to stay in the business of delivering children, but because he was the only doctor in that part of our State who was really doing that, he felt a social obligation to continue delivering babies, as well as the fact that he personally loved the practice of delivering babies. It was getting to a point where he was not sure how much longer he could do this.

Also at this meeting there were two doctors who should have been there but were not because they had left the practice. They were two doctors from northern New Hampshire, which is a rural part of our State. They are no longer practicing and delivering our children. As a result, there is no doctor in northern New Hampshire today who delivers babies. There is no OB/GYN because they have been driven out of the practice of medicine. Those two doctors have left the practice in that area. One moved to another State and the other simply dropped the business of delivering babies.

The stories go on. They are real and they impact real people. In order to see a doctor, a woman in northern New Hampshire today who is pregnant has to now drive from Colebrook, NH, probably down to Hanover, NH, or at least down to Littleton at the closest, which is a long drive. It is a curvy road and in the winter it is a difficult drive. Even though people are comfortable driving in the winter in New England and in New Hampshire, we can get some serious snow and ice and it can be very testy and sometimes one cannot even get through because the snow cannot get removed in time or it is too heavy. So that woman is at risk, and it is not just in New Hampshire.

This is a photograph of a woman from Arizona named Melinda Sallard. She was forced to drive about 45 miles in order to deliver her child. In the first 2 blocks, they drove by the hospital that was next door to their house, but there was no OB/GYN doctor there because they had given up the practice, so she had to drive 45 miles to the hospital. On the way, she had the baby in Arizona. The baby's heartbeat had actually stopped while she delivered it in the car, and while her husband kept driving to the hospital, she was able to start the baby's heartbeat again and the baby survived. Now we see the photograph, but it was risky and it was traumatic. She should have had a doctor in the hospital that was almost next door to her house, but she did not. She did not because the doctors in that hospital had to give up the practice.

We have Dr. Schmitt, one of the best doctors in North Carolina, according to the patients who saw him deliver babies, who loved the practice, but because the cost of his insurance went up so much as a result of the potential of a suit, of which I understand he had never had any, he had to give up the practice. This is a picture of the doctor and I think just about the last child he delivered. The child is not very happy about being the last child he delivered. He does not have a smile on his face. He wanted the doctor to deliver other children. Dr. Schmitt had to give up the practice. He actually moved because he could not maintain the premiums that were driving up

costs so extraordinarily.

What is causing this? Essentially, it is being caused by lawsuits, many of them frivolous. In fact, there is a statistic that says only 4 percent of the lawsuits against OB/GYNs have a recovery. The rest are frivolous--not all frivolous, maybe, but the majority are. The rest don't lead to any recovery at all. But as a result of those 4 percent of lawsuits getting astronomical recoveries, the whole pool of coverage costs for all baby doctors has increased so dramatically that they have been driven out of the business or they have been put in a position where they can no longer deliver children in a manner which is either fair or accessible for many women.

We are at serious risk of having this discipline so contracted that we will end up rationing care in this area, which could be very serious and unfortunate for women. It is a function of the fact that our legal system has run amok relative to baby doctors and the women who need to see those baby doctors. I have heard our candidates from the other side of the aisle, both of whom are Members of this body--I have heard Senator Kerry say: I have spent my career fighting against special interests. I think he has said that almost every day, but that is a direct quote from the newspaper where he said it in Boston. "I spent my career fighting against special interests."

Where is he fighting for these women? Where is he when these women want to see a OB/GYN and they can't? I suggest maybe he is fighting for the special interests on the other side of the coin, those who are the trial lawyers. For some reason the trial lawyers appear to have the ear of the majority--not the majority but of enough so we cannot even hear about this bill on the floor much less vote on it. We should at least be able to take up the bill. But, no, no, the trial lawyers aren't going to let us take up this bill. We are not even going to be allowed to debate it on the floor and have votes on amendments.

Maybe some who spent their career fighting special interests could come down to this floor and explain that one to me. Explain to me why Dr. Schmitt isn't practicing medicine anymore. There is somebody who needs someone to fight for him. Explain to me why Mrs. Sallard had to drive 45 miles and have her baby in the car. Explain to me why we don't have a doctor in Colebrook, NH, who will deliver babies or see people when they want to have babies. Explain that to me if you want to talk about fighting special interests or maybe come down and explain to me why trial lawyers are right. Then you say you fight against special interests. There is an irony there.

I have heard Senator Edwards say: "I want to make health care a birthright for every single child born in this country." That is Senator Edwards in the Des Moines Register--"every single child born in this country." Senator, come down and explain to us how children are going to be born if their mother cannot see a doctor. What type of risk is that child going to be at when they are born if the mother cannot see a doctor in Colebrook?

This bill is being held up because there are interests out there that do not want to bring this issue to the floor of the Senate even for debate. They just want to stiff-arm it on behalf of an interest in this country which believes that it should have the right to bring these suits but has, as I said, 96 percent of them thrown out of court and in the same manner throws out of the delivery

room the doctors, throws out the women to be on their own to look for a doctor miles away, at great inconvenience.

This is a battle of special interests. My special interest in this one happens to be babies and mothers. Somebody else's special interest happens to be the trial bar. I am happy to defend this special interest, babies and mothers, on the Senate floor today. I would like to know why the other side is not willing to let us have this bill come forward.

Let's get into some specifics about the size of the problem. The next chart we have shows the cover of Newsweek, which ran a very good piece on "Lawsuit Hell, How Fear of Litigation is Paralyzing Our Professionals." Right in the middle is a doctor. It could be a midwife. Remember, midwives are as much affected by this as doctors. But essentially it is those people you see when you most need them, and especially if you are a woman and you want to have children. That person's career is paralyzed, and as a result of their career being paralyzed, our ability to get adequate health care is paralyzed. It is a good story. I recommend it to everybody.

I want to make the point this is about women and it is about women's right to access decent health care. So speaking on behalf of that special interest--I know Senator Kerry is fighting against special interests, and he is probably fighting against this special interest, but I want to put something on the record. I don't want to put it in the **RECORD** because we will ruin the **RECORD**, but I want to mention that we have 85,000 petitions. Eighty-five thousand women have signed petitions asking that we at least consider this bill, where we at least get a vote on whether or not their doctors can have some protection. Eighty-five thousand women want to see a doctor, want to be safe when they get into those child-bearing years. They want to have the opportunity to have safe medical care.

So we have brought those petitions here today. I am obviously not going to put them in the **RECORD**. I don't want the American taxpayer to have the expense of printing this. But I want to make it clear this is about real people, women who need health care, and especially need it when they are about to have children.

The extent of this crisis is significant. It is not limited to New Hampshire, although New Hampshire has a very definite problem. The American Medical Association has developed this chart which basically color-codes States on the effect of the medical liability crisis on the availability of doctors. There are a number of States in this country where it is getting to be critical, where you are in a crisis mode if you want to see a doctor because you may not be able to see one. Those are the States in red.

If you recall, in West Virginia the doctors actually weren't available for some time because of that issue. In Pennsylvania the same problem arose. It arose in State after State, large States with large populations: Florida, Texas, Pennsylvania, Ohio, Missouri, and smaller States, too, such as Wyoming. Every one of those red States is in crisis. That means there is a real problem, that you may not be able to see a doctor when you want to have a child or getting to see that doctor will be difficult.

The yellow States are the ones moving toward crisis. This is not an abating problem; it is a growing problem. Only the white States, and there are very few of them, have been able to get their acts together, and we will find out why in a few minutes when we start talking about what States have passed limitations on liability insurance, and that being the issue.

I want to take a specific look at a specific State which is in crisis: New York. New York State--I just picked New York out arbitrarily--is in crisis. This is for baby doctors. There are seven counties in New York where there are no obstetricians, where, if you are an expectant mother and you want to go see a doctor, you cannot stay in the county you are in. Some of those counties have a fairly high delivery rate: 200 in this county, 289, 215, 322 children. This is on an annual basis.

Then there are a number of other counties which only have one obstetrician, and some of those counties have even larger numbers of delivery rates. So you are dealing with some people who are having to drive a heck of a long way in order to see a doctor. And New York State can get pretty cold and snowy, especially around Buffalo and Syracuse, where, as far as I can tell, it always snows except for in June and July. In any event, it can be hard to drive if you are an expectant mother. You can be under a lot of pressure to get to those doctors.

It is not that they can't practice in those counties; it is that they cannot afford to practice in those counties. Why can't they? This problem is a uniquely rural problem in some ways. In order to pay that insurance premium, which is so high and has gotten so extraordinarily high over the last few years--in order to pay that premium you basically have to deliver a lot of babies.

If a doctor has a practice in a rural area, not generating a huge amount of births, then you cannot work hard enough or deliver enough births to pay your premium. The doctor I mentioned from Laconia, NH--by our standards a fairly populous area of our State; not overly populated but a fairly decent community--has to work 5 months to pay just his insurance premium. If he were working in Colebrook, obviously, he would have had to work all year to pay the insurance premium and then he would not have earned enough to pay the premium. That is why we have no OB/GYN in Colebrook, NH. There are not enough babies being delivered. The premiums have gone up so radically they cannot afford to continue to practice.

I am sure there are a lot of places in the Presiding Officer's State of Kansas which have the exact problem. I know parts of Kansas are reasonably rural. Those folks probably have to drive a long way to see a doctor. Kansas is a big State compared to New Hampshire. It is flat, so it is an easy drive, but still it is a long drive.

Let's talk about some of the statistics so this is not just anecdotal: 72 percent of the OB/GYN doctors in Pennsylvania surveyed have changed their practice to reduce their liability--that means they have stopped delivering babies; 75 percent of the OB/GYN doctors in West Virginia, as well; 71 percent in Kentucky. There are dramatic drops in doctors willing to deliver babies or do any high-risk procedures at all.

OB/GYN doctors in New Hampshire experienced a 100-percent increase in premiums within 3 years. That is a staggering number. As I mentioned earlier, only 4 percent of the lawsuits brought relative to OB/GYN practices actually lead to recovery. That is staggering because it shows there are a lot of frivolous lawsuits.

What is the way to resolve this? There are a lot of moving parts in the health care question. I am not saying the only issue that affects costs that the OB/GYN doctor incurs during their practice is the liability issue, the insurance issue, the issue driven by lawsuits which have no relationship to a doctor's practice because the doctor has never been sued. There are other factors. There is technology, hospital associations, all sorts of factors. Obviously, the insurance industry has gone through some significant adjustments, especially in the rate of return on investments as a result. But we know the single most significant factor by far is the increase in costs of the insurance policy. That is the item that is most affecting the ability of the doctors to continue to practice.

We also know those States which have taken action in this area have actually been able to control the costs so the doctors are no longer feeling pressure at that level. The best example is California. Liability reform occurred in California, with caps, in 1977. As a result, in the California cost increase experience, premiums have gone up 182 percent compared with the rest of the United States, which has gone up 573 percent. The chart shows the difference. It reflects the fact that if you put in a responsible approach to premiums to liability insurance, you can control the rate of growth of the cost and, as a result, you can create more availability of doctors and more affordable health care.

This chart shows that reform works. The bottom line reflects obstetrics. The first two areas, Los Angeles and Denver, have in place laws which limit recovery in the area of pain and suffering. Their basic premium for a policy of \$1 million/\$3 million is \$54,000 and \$33,000. The next four jurisdictions do not have those laws: New York, Las Vegas, Chicago, and Miami. Premiums in Miami are almost four times higher than Los Angeles, which would be a comparable city, and about seven times higher than Colorado; Chicago, two times higher; Las Vegas, two times higher; New York, 1 1/2 times higher than Los Angeles; two times higher than Denver. That reflects the fact that if you put in responsible reform in the area of liability insurance you can control those premium costs.

What is responsible reform? It is reform that addresses the primary concerns of a person who is injured but also addresses the fact that we have a large number of frivolous lawsuits being brought and a large number of lawsuits leading to extraordinary recoveries, which costs are being passed on to all the OB/GYN baby doctors in this country. As a result, baby doctors who have absolutely no history of malpractice are forced out of practice and mothers are not able to see their doctors and are being limited in access.

This bill tries to address that. First, it says right off the top that a State has the right to make a decision on what the cap will be. We have essentially addressed this issue of States rights. We put in a cap that if a State wants to go above it they can go above it; if they want to go below it, they can go below. We also say there is no limitation on recovery for medical costs.

There was a recent decision where, unfortunately, there was a severe injury and the child would need medical care for years. The bill came to something like \$18 million. That would be an award that could occur if that was the child's medical costs; that could be recovered--whether \$18 million, \$10 million, \$5 million, even more, \$20 million. Hopefully, that will not happen too often but if it does the parents have a right to that recovery.

As to lost compensation, if the mother is injured and there is a loss of compensation, if she has a job that she can no longer go back to or is limited in her ability to get a job, there is absolutely no limit as to what the recovery is relative to her compensation. If she is going to have a lifetime expectancy earning of \$10 million, discounted to whatever that is, she gets that recovery.

What we do not have in this bill, or what we try to cap because this is where the costs have gone out of control, this is what is driving the premium rates, is a limit on pain and suffering, which is basically the money that is thrown on top. Pain and suffering is what a jury feels when they hear a sad story that they think deserves an extra bonus award. That is limited to \$250,000 under this bill. That is a reasonable limit. Most States are at that number that have acted in this area. But if a State wants to go above that area, it can step out of that and pass a higher amount.

The practical effect of this bill, should it pass, is that the 85,000 women who have written to us, the literally hundreds of thousands of women who are worried whether they will have a good doctor to see or even whether they will be able to see a doctor or whether they will have to drive many, many miles to see a doctor, putting themselves at risk, those women's concerns will be addressed to some degree because we will make practicing medicine in the area of delivering babies affordable again.

We can get a doctor back in Colebrook. A doctor will not have to work 4 or 5 months of the year just to pay his or her premium. Doctors who love to deliver babies in Dover, NH, will be able to get back into the business of delivering babies because they will be able to afford the premium.

That is what this is all about. It is about giving women the opportunity to have access to good doctors who can deliver babies and have those babies be healthy. Why we are not even going to be allowed to vote on going to this bill is beyond me, but that, I understand, is a position the Democratic leadership has taken. It seems ironic in the face of Senator Edwards' statement, which I will read again, as the potential standard bearer of his party: "I want to make health care a birthright for every single child born in the country."

It is going to be hard for children to be born if they cannot see baby doctors. I do not understand why we cannot at least debate this issue on the Senate floor and have a vote on it. Senator Kerry would appear to want to do this because he wants to fight special interests. Well, I want to promote this special interest--which is children, mothers, expectant mothers, and doctors who deliver babies. So if the other side wishes to oppose those three constituencies, that is their choice. But I think they need to explain to us why it is good for a mother, good for a baby, or

good for a baby doctor that the practice of medicine is being curtailed in this country in the very critical discipline of obstetrics.